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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of) MM Docket No. 94-88
)
COMMUNITY EDUCATIONAL ASSOCIATION) File No. BPED-930316MF
Holly Hill, Florida)
)
For a Construction Permit for a)
New Noncommercial Educational FM)
Station on Channel 212A (90.3 MHz))

To: Administrative Law Judge
Joseph Chachkin

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MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dziedzic
Chief, Hearing Branch

Robert A. Zauner
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

January 26, 1995

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Preliminary Statement

1. By Hearing Designation Order, 9 FCC Rcd 3626 (1994), the Commission, by the Chief, Audio Service Division, designated the above-captioned application of Community Educational Association ("CEA") for hearing on the following issues:

1. To determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with 47 C.F.R. § 73.503(a) of the Commission's Rules.
2. To determine whether there is a reasonable possibility that the tower height and location proposed by CEA in this proceeding would constitute a hazard to air navigation.

CEA's application was designated for hearing with the mutually exclusive application of Cornerstone Community Radio, Inc.

("Cornerstone"). On August 30, 1994, Cornerstone filed a petition for leave to amend its application to change its proposed channel of operation. The Presiding Judge granted Cornerstone's amendment and granted its application. Memorandum Opinion and Order, FCC 94M-521, released September 13, 1994.

2. A hearing session was held on December 15, 1994. The record was closed on December 15, 1994. Tr. 75.

Proposed Findings of Fact

3. According to CEA's "Organization and Board of Directors Agreement," CEA is an association formed "not for gain or individual profit." Its purpose is to assume its share "of responsibility and the privilege of propagating high quality

educational programs (broadcast and otherwise) by all available means and in pursuance of said purpose to promote such purposes; to operate, conduct and engage in any lawful activity including all mediums (sic) of media and broadcasting...." CEA Ex. 1, p. 1.

4. According to CEA's "Statement of Educational Goal and Purposes..."

Community Educational Association...is an educational organization committed to promoting and assisting the various charitable, religious and educational organizations in the area. CEA's programming will be used to increase political and social awareness, improve relationships and provide better understanding between different cultural/ethnic groups (with a special emphasis on Hispanic/Anglo relations). Teaming with local community leaders and educators, CEA also plans to keep its community educated and informed [about] issues of local concern. To keep aware of the community's changing needs, CEA will conduct informal ascertainment of local business, religious and political leaders, as well as assess letters and phone calls from our listening audience. CEA Ex. 2, p. 1.

5. CEA plans to present programming that will address the following issues of public concern in the proposed service area:

Health Care: CEA will offer locally produced programs addressing such issues as personal health care, family life, AIDS, teenage pregnancy and drug abuse. These programs will use a call in/interview format.

Education: CEA plans to set aside air time for student produced programs dealing with issues that concern them. CEA also plans to develop a "Radio School" which, using written material developed with the aid of local educators, will offer courses in basic skills such as Math, English, Reading Skills, Health and Hygiene. CEA plans to offer educational

programming in English and Spanish.

Family Matters: Interview, panel discussion and call-in shows will be broadcast dealing with divorce and single parent households and how children of such families cope. CEA will also offer programs on drug and alcohol abuse prevention. Finally, CEA will present programming focusing on Bible studies.

CEA Ex. 3.

6. The following is a description of some of the specific programs CEA intends to produce:

The Radio School will be produced in conjunction with the Holly Hill Public School System and local colleges and universities. CEA intends to use this program to offer for credit courses with local educational institutions if the details can be worked out. The target of the program will be students who did not complete their secondary education. Many of the programs will be offered in Spanish and English.

The Student Hour will deal with issues facing youth today. Topics will include violence and drug abuse. The program will be produced by students from various secondary and post secondary schools.

The Church Hour will present services of local churches of all denominations. The program will also include panel discussions on religious teachings and philosophies.

The Health Hour will be an interview/call in program featuring health professionals.

Learning New Skills will feature local businessmen explaining the techniques they used to develop their businesses. Other programs will instruct listeners on how to start their own businesses.

The News Hour will be broadcast daily for one hour. It will offer news, sports and weather.

Community Hotline will focus on consumer problems.

Other programs offered by CEA will focus on the environment,

politics, interviews on important events of the day and the use of the public library. CEA Ex. 6.

Proposed Conclusions of Law

Educational Organization Issue

1. Section 503(a) of the Commission's Rules specifies that:

A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.

2. Applicants for frequencies reserved for noncommercial educational FM Stations must qualify as either an educational institution or as an educational organization. Organizational applicants, such as CEA, "must demonstrate that they have an educational goal and are committed to the advancement of that goal." Appendix A to the Notice of Inquiry in Docket 78-164, 43 FR 30842 (1978) ("Appendix A"). "In evaluating compliance with these standards, emphasis is given to those programs that are instructional (for credit) and general educational (no formal credit)." Palm Bay Public Radio, Inc., 6 FCC Rcd 1772, 1773 (1991).

3. The Commission has stated that its basic role:

in the history and development of public broadcasting has been to insure that spectrum space is available for its use and to broadly classify its program service. It has meant that the Commission has had the appropriately limited role of facilitating the development of the public

broadcasting system rather than determining the content of its programming. From the perspective of the Commission, public broadcasting is characterized largely by a negative distinction, i.e. public stations are not operated by profit seeking organizations....

This basic regulatory scheme has had several public interest advantages. It has made the service possible and its (sic) has maintained its separate identity. At the same time, it has allowed the system to develop in response to the diverse and proximate needs of the communities within which it operates and not according to a standard Commission mold. Rather than imposing one unified and comprehensive standard for public broadcasting, the Commission has allowed those who operate, support, and consume public broadcasting to directly determine the nature of its service, especially its programming.

Public Radio and TV Programming, 87 FCC 2d 716, 732 (1981).

Traditionally, the Commission has sought to "avoid all unnecessary intrusion into the programming decisions of licensees, including those of public broadcasters." Id. 87 FCC 2d at 730.

4. The Commission has defined "General Educational" programming as "an educational program for which no formal credit is given." Appendix A. In light of its reluctance to intrude on programming decisions, the Commission, however, does not delve into the question of what constitutes "General Educational" programming. Rather, the Commission relies on the relationship between the educational goals of the applicant and the programming it chooses to present to meet such goals. See, i.e. the Commission's holding in Palm Bay Public Radio, where the

Commission found sufficient the licensee's illustrative programming list and its statement that it would provide educational programming and programming responding to the needs and interests of its community of license. 6 FCC Rcd at 1774.

5. In order to establish that its station will be used for the advancement of an educational purpose, an applicant need provide only "a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area." FCC Form 340, February 1992, Section IV. The instructions for completing Section IV of Form 340 reiterate that "Applicants need only (emphasis in the original) file a program statement called for in Section IV of this application." The requirement that applicants provide a list of proposed weekly programming was eliminated from FCC Forms 340 in 1985. The Commission has held that it would be unfair to process an application using information it no longer is required to provide. Palm Bay Public Radio, 6 FCC Rcd at 1774.

6. CEA is not organized for gain and profit and has as its educational purpose the broadcast of high quality educational programs. Consequently, it is concluded that CEA is a qualified educational organization. In addition, CEA has provided the information called for by the current Form 340. That information

establishes that CEA will use its station for the advancement of its educational purpose. Based on CEA's showing, Issue 1 should be resolved in CEA's favor.

Hazard to Air Navigation Issue

7. On January 18, 1994, CEA filed a Petition for Leave to Reopen the Record and for Leave to Amend its application. In its petition, CEA reports that it has received a determination that its tower will not be a hazard to air navigation from the Federal Aviation Administration (FAA) provided that its tower height does not exceed 114 feet AGL. CEA seeks to amend its application to specify operation at 114 feet and to reflect the FAA notice.

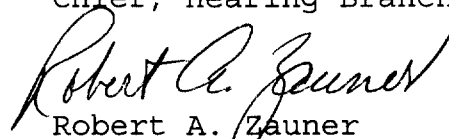
8. Based on an analysis of the CEA amendment by its engineering staff, the Bureau has determined that CEA's amendment is in compliance with all relevant provisions of the Commission's Rules. Moreover, CEA's amendment appears to meet the good cause criteria. Consequently, the Bureau supports acceptance of the CEA amendment and resolution of the pending air hazard issue in CEA's favor.

Ultimate Conclusion

9. CEA has met the issues specified against it and, thus, there is no impediment to a grant of its application.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Robert A. Zauner
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

January 26, 1995

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 26th day of January 1995, sent by regular United States mail, U.S. Government frank copies of the foregoing **"Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law"** to:

Scott C. Cinnamon, Esq.
Brown Nietert & Kaufman
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036


Michelle C. Mebane